

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0342
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 11 DP 867302, 79 A Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Alterations and Additions to an existing residential building to create an attached dual occupancy and strata subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Stepping Stone Custodian Pty Ltd
Applicant:	Stepping Stone Custodian Pty Ltd
Application Lodged:	09/04/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	30/04/2019 to 14/05/2019
Advertised:	Not Advertised
Submissions Received:	13
Clause 4.6 Variation:	4.3 Height of buildings: 20% 4.4 Floor space ratio: 100%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,200,000.00

Executive Summary

This application seeks consent for alterations and additions to the existing building and use as a dual occupancy (attached) with strata subdivision. This report provides an assessment of Development Application No. DA2019/0342.

The subject site is zoned R1 General Residential under Manly Local Environmental Plan 2013 (MLEP 2013). Development for the purpose of a 'dual occupancy' is permissible with consent.

The site is the subject of a prior approval for alterations and additions to the existing building and use as a dual occupancy (attached) and strata subdivision under DA326/2016. The DA was refused by the

Northern Beaches Development Determination Panel and was subsequently approved by the Land and Environment Court.

The current proposal has a design which is mostly consistent with the consent issued by the Court with the exception of a number of plans which appear to be inconsistent and includes conflicting design detail.

The assessment of the application has concluded that notwithstanding the developments non-compliance with the building height and floor space ratio development standards, that the application be refused due to inconsistencies within the plans submitted and lack of information, specifically the erection of height poles to provide certainty of any impacts of the proposal on existing views from surrounding sites.

The application was publicly exhibited in accordance with Manly Development Control Plan 2013 (MDCP 2013) and a total of twelve (12) submissions were received. The issues and concerns raised in the submissions are addressed in this report. The application seeks variations to the building height and floor space ratio development standards in excess of 10%, and is referred to the Northern Beaches Local Planning Panel to refuse the application for the reasons detailed within this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks alterations and additions to the existing building and use as a dual occupancy (attached) with strata subdivision and a front fence. Specifically, the proposed works include:

Unit 1 - Lower Ground Floor (RL24.280 - 24.640)

- 2 x bedrooms
- Bathroom
- Study/living/bedroom
- Laundry
- 2 x sub floor store rooms (RL24.580 + RL24.640)
- Courtyard (16.5m²)

Ground Floor (RL26.860)

- Open-plan living, kitchen and dining area
- 2 x bedrooms
- Ensuite
- WC
- Internal stair access
- 3 x parking spaces accessed from western driveway access
- Bin enclosure
- Pedestrian access from Lauderdale Avenue

Unit 2 - First Floor (RL29.670)

- 2 x bedrooms
- Bathroom
- Laundry
- Open-plan living, kitchen and dining area
- Bin storage
- Single car space (on suspended slab) accessed from eastern driveway access

Second Floor (RL32.310)

- 1 x bedroom with walk-in-robe and ensuite
- South facing deck (33.5m²)

The subject application has been overlaid with the stamped plans approved via agreement with Council during Land and Environment Court proceedings for the matter *Stepping Stone Proprietary Limited v Northern Beaches Council [2018] NSWLEC 1638* and the design appears to merge two different schemes resulting in contradictory documentation.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Part 2 Permitted or prohibited development
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

SITE DESCRIPTION

Property Description:	Lot 11 DP 867302 , 79 A Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject property is commonly known as 79A Lauderdale Avenue and legally known as Lot 11 in DP 867302 and is located on the southern side of Lauderdale Avenue.</p> <p>The property is irregular in shape and has a frontage of 13.24m to Lauderdale Avenue, an average depth of 20m and an overall site area of 264.8m². The property currently contains a part 2, part 3 storey building with vehicular access via two existing driveways from Lauderdale Avenue</p>

to a hard stand space above a garage area to the front of the existing building.

The property slopes from the front at Lauderdale Avenue to the rear and includes a crossfall of approximately 5 metres. The land further slopes to the rear at the adjoining battle-axe property toward the harbour foreshore.

The area is characterised by land sloping down toward the harbour foreshore with residential development on both sides of Lauderdale Avenue. This provides a situation in which dwellings on the northern side of Lauderdale Avenue are at a higher level of topography and often have water views over and around the dwellings on the lower southern side of the street.

A sewerline intersects the property at the rear of the property. There is also an easement for carriageway which services the subject site and the adjoining battle-axe allotment.

Map:



SITE HISTORY

Development Application No. DA0326/2016 for alterations and additions to the existing building and use as a dual occupancy with strata subdivision was lodged with Council on 25 November 2016. On 8 September 2017, the application was refused by the Development Determination Panel.

On 18 October 2017, a Review of Determination of DA0326/2016 was lodged with Council. The application was subsequently withdrawn on 5 December 2017.

On 22 December 2017, the Applicant lodged a Class 1 Appeal with the NSW Land and Environment Court.

On 25 June 2018, a s34 Conciliation Conference was held. Following this, amended plans were received on 23 July 2018 and 4 October 2018.

Consent to DA0326/2016 was issued by the NSW Land and Environment Court on 7 December 2018.

On 18 March 2019, a Notice of Appearance was lodged with the Supreme Court of NSW by a neighbouring property seeking judicial review of the NSW Land and Environment Court consent for Stepping Stone Pty Limited v Northern Beaches Council [2018] NSWLEC 1638.

As Council is an active party to these proceedings, Council's legal Counsel have been informed of the progression of this application and have facilitated communication to the owner and Applicant in relation to Council's position with the lack of height poles and unacceptable plans. At the time of writing this report, this matter had not been resolved in the Supreme Court.

Development Application No. DA2019/0342 for alterations and additions to the existing building and use as an attached dual occupancy with strata subdivision was lodged with Council on 9 April 2019. This application is the subject of this assessment.

On 19 September 2019, the Applicant was sent a request for the installation of height poles to facilitate view loss assessments and additional information to correct conflicting drawing details within the plans submitted. At the time of writing this report, no response had been received in relation to Council's request and no height poles had been erected.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration'	Comments
Regulation 2000 (EP&A Regulation 2000)	<p>Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the erection of height poles and to clarify numerous inconsistencies and conflicting design details on the plans submitted with the application. No response was received in relation to these issues. This matter forms a reason for refusal for this application.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent..</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration'	Comments
development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The subject application creates uncertainty and confusion due to the inconsistencies with the documentation submitted which fails to provide a clear built form. Further, Council on a number of occasions has requested that the Applicant submit amended plans which correlate between plan numbers and height poles to establish the full impact of the additional height on adjoining properties. As Council has received no response in this regard, these issues form reasons for the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Ms Patricia Ann Rochester	6 / 76 Lauderdale Avenue FAIRLIGHT NSW 2094
Clive Williams	3 / 29 Victoria Parade MANLY NSW 2095
Monique Licardy	Invalid Address NSW
Mrs Michelle Montgomery	72 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Lloyd Anthony Stuart Robson	98 Pitt Road NORTH CURL CURL NSW 2099
Mr Robert Lynton Adams Mrs Pamela Grace Adams	75 Lauderdale Avenue FAIRLIGHT NSW 2094
Ms Deborah Anne Taylor	1 / 68 Lauderdale Avenue FAIRLIGHT NSW 2094
Mrs Ruth Jan Neighbour	37 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mrs Suzanne Irene Shearer	42/25 Marshall Street MANLY NSW 2095
Mr Benjamin Mark Neighbour	5 / 78 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Jason Barry Warburton Mrs Idette Kristine Warburton Ms Katherine Sarah Hadfield Mr John Malcolm Boulton	C/- Jade Swimming Pools Pty Ltd 488 Windsor Road BAULKHAM HILLS NSW 2153

Name:	Address:
Miss Jennifer Grace Chapman	Po Box 1078 MANLY NSW 1655
Mr Jonathan Ian Trope	1 / 90 Lauderdale Avenue FAIRLIGHT NSW 2094

The following issues were raised in the submissions and each have been addressed below:

- Precedent created for further height non-compliance with development in this area. Proposal is 1.3 times over.*
It appears the roof line is 1.83m above the requirements.
The two additional stories are an unsightly addition.

Comment: The proposed development seeks to replace the existing gabled roof structure with an additional level with a skillion roof. The difference in height above the existing ridge line is between 0.42m and 0.74m. While the structure will be 10.2m in total height which is up to 1.7m above the 8.5m height limit, it is noted that the existing building is approximately 10.1m in height measured from existing ground level. The additional height located further to the north of the existing ridge line is not considered to result in any material difference when viewed from Lauderdale Avenue.

Notwithstanding, the application has undergone a thorough assessment of this height breach which is addressed in further detail within Clause 4.6 of this assessment report. As a view loss assessment has not been undertaken with the benefit of height poles for the current scheme, the proposed height breach is considered unacceptable in this instance subject to a full understanding of the impact of the works on view loss to neighbouring properties.

Should this application be considered worthy of approval, it is not considered to create any adverse precedent in this location as each site is subject to a merit assessment dependent on the site constraints. This issue does not hold determining weight.

- FSR and Density*
Proposed FSR is 1.1:1 more than double the FSR standard of 0.5:1
Block is undersized at 264.8m², zoned for 300m² per residential dwelling, resulting in 2.6 times the density.

Comment: The existing development on this site provides a density of 1 dwelling/88.3m² given there are three (3) separate domiciles currently. The proposed development will provide a reduced density of 1/132.4m² by reducing the development to two (2) units. It is noted that the site is undersized given the density control is 1 dwelling/300m² and the site has a total area measuring 264.5m². While the development will result in a non-compliant FSR of 1:1, a detailed assessment of FSR under Clause 4.6 of MLEP 2013 has satisfactorily demonstrated that there will be no additional adverse impacts as a result of the increase to floor space.

- View loss*

Comment:

A view loss assessment has been provided under clause 3.4.3 Maintenance of Views within the MDCP section of this report. While view loss is potentially considered to be minor in the context of the proposed development, it cannot be definitively determined due to inconsistencies with

the plans which show the location of the proposed second floor level in two different locations.

While height poles are evident on the site, these are uncertified and were apparently erected for the previous development application. Due to the Applicant failing to install accurate height poles for the current scheme on the site, a proper analysis of view loss is not able to be made.

- *Impact on on-street parking. Four additional apartments will increase the number of cars without dedicated parking.
The parking design and manoeuvring is too restrictive and will not be used.*

Comment:

The proposed development is reducing the number of dwellings on the site from three (3) down to two (2). The plans indicate that the site will accommodate four (4) resident parking spaces and one (1) visitor space.

While in principal this arrangement meets Council requirements for parking, the plans submitted with the application provide two different arrangements for parking which are contradictory. As the actual proposed arrangement is unclear, the application is not supported in this respect. This issue forms a reason for refusal.

- *Drawings are confusing. No significant change from earlier application.
Conflicting detail of top floor on plans. Application is not consistent with 'Regulation 56', procedural fairness and the notification is invalid because the drawings show 2 different top floor proposals.
Is there a deck or pop-up garden, furniture, plants?*

Comment:

As indicated, the plans set submitted to Council and subsequently notified provides conflicting designs and contradictory layouts. Council wrote to the Applicant on 19 September 2019 and on a number of subsequent occasions specifically identifying the following issues with the plans:

DA11-Issue I dated 17.07.2018 – This Site Plan shows the location of the proposed second floor addition offset to the east of the site and not in the centre. This is repeated on DA21 Issue I – Section 3

DA13-Issue I dated 17.07.2018 – The proposed pervious areas identified against the northern façade of the building will not facilitate the proposed parking identified on DA15 for two (2) vehicles. This is again repeated on DA18 Issue I – Carport-Ground Floor Plan

DA30-Issue I – 3D Views 1 – View 1 and 2 indicate a mansard style roof line to the north which is inconsistent with the roof and façade identified on DA32-Issue L – 3D Views 3 and DA25-Issue L – North Elevation.

Further inconsistencies with the plans have been identified subsequent to those listed above. The Applicant has failed to address the many inconsistencies with the plans and therefore the development is uncertain and not supported.

- *Plans are not in accordance with the Land and Environment Court judgement.
The Statement of Environmental Effects is misleading because it is not based on plans incorporated in the Applicant's agreement with Council and the LEC judgement.
The top floor deck remains unchanged from the last plan. Plans on website show the top floor in different positions.*

Comment:

This submission references a previous development application DA326/2016 which was refused by the Northern Beaches Development Determination Panel on 8 September 2017 and subsequently appealed in the NSW Land and Environment Court. The Appeal was upheld following a s34 agreement based on amended plans.

While the Applicant's Statement of Environmental Effects claims that the current application is a complete replica of the Court approved scheme, the plans are in fact not entirely consistent with the Court approved stamped plans. This issue with the plans submitted with the current development application providing inconsistent design schemes is a major issue with the application and forms a reason for refusal.

- *Privacy impact from eastern windows adjoining Unit 02 Second Floor Level bedroom and Study Request for a privacy screen along the eastern side of the deck with some planting. Privacy treatment to W20 (bathroom) and W19 (bedroom) which overlook west side living/dining area.*

Comment:

Second Floor

Privacy concerns are raised by the owners of the property to the east of the site, No. 77 Lauderdale Avenue Fairlight. Specifically, the areas of concern include the east facing windows at second floor level. These windows adjoin a bedroom and walk-in-robe/ desk area. While these windows are setback 3.0m on the second floor plan DA17, other plans within the set show this facade with only a 1.3m setback.

Notwithstanding the inconsistent depiction of the second floor level, the windows on the eastern facade adjoin low traffic, low impact spaces being a bedroom which would likely contain window coverings and will generally look into the main roof and garage roof of this adjoining property. Were the application to be supported, a condition of consent could be imposed requiring translucent glazing to the these windows.

First Floor

In relation to W19 and W20 at First Floor Level, these windows are highlight windows with a sill height measuring 1.8m. There is no concern with privacy impacts from these windows.

Second Floor Deck

As previously identified, the location of this second floor deck adjoining the bedroom is identified in different locations on different plans between 2.2m and 3.0m from the eastern boundary. Notwithstanding, as this deck adjoins a bedroom, it is not considered likely to be a source of impact on the adjoining properties. This issue does not hold determining weight.

- *Materials.
Request that the finishes be conditioned to ensure a high end finish.*

Comment:

Were the application to be supported, the finishes detailed on the plans would form part of any approval. This issue does not hold determining weight.

- *Increased height will impact on light/sun to No. 75 Lauderdale Avenue.*

Comment:

The application was accompanied by shadow diagrams showing the existing and proposed shadows of the development during the winter solstice. As No. 75 Lauderdale Avenue is to the south-east of the subject site there is no additional shadow impact on this property from the proposed development.

- *Applicant has used surrounding buildings as comparable examples from an angle that misrepresents their height, bulk and scale which is three (3) storeys from the south but present as only one (1) storey above street level.
Proposal is a gross over development.*

Comment:

Lauderdale Avenue contains a varied range of housing types, styles and scales including residential flat buildings, dwelling houses and dual occupancies. The subject site and the immediately adjoining property to the east both present large bulky roof forms over the street level portion of the development. The proposed development replaces the existing roof expanse with habitable floor space which will be commensurate in scale with the large mansard roof form of No. 77. The proposal is considered acceptable in terms of its bulk and scale and presentation to Lauderdale Avenue.

- *Errors and omissions in the Statement of Environmental Effects referencing the court judgement dated 11 December 2018 (Stepping Stone Proprietary Limited v Northern Beaches Council [2018] NSWLEC 1638.*

This consent is subject to proceeding seeking judicial review. This DA is an abuse of process. We require Council to advise the legal basis upon which it has permitted the DA to proceed given the Judgement of the Land and Environment Court.

Comment:

The inconsistencies between the Plans and Statement of Environmental Effects in reference to the court consent of DA326/2016 have been addressed previously. The current application has been submitted independent of the previous application and the subsequent Supreme Court judicial review. The application has been lodged in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000 requirements. Accordingly, Council has no legislative basis on which to reject this application. The proposal has been assessed on its merit and in the circumstances is recommended for refusal.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported No review comments or conditions.
Landscape Officer	Supported The landscape component of the proposal is acceptable subject to the completion of landscaping. Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General

Internal Referral Body	Comments
	<p>Principles of Development, and section 4: Development Controls and Development Types, and specifically 3.3.1 Landscaping Design.</p> <p>A Landscape Plan is provided in accordance with DA Lodgement Requirements, and satisfies the requirements of Manly DCP2013.</p>
NECC (Coast and Catchments)	<p>Supported</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The proposed development meets Clauses 12 and 15 of the Coastal Management SEPP (13 and 14 do not apply) and meets the requirements of the Sydney Harbour REP and DCP, and relevant clauses of the Manly LEP and DCP.</p> <p>The impacts on the coastal environment have been assessed as acceptable subject to conditions.</p>
NECC (Development Engineering)	<p>Supported subject to conditions</p> <p>The finished level of the carport has not been submitted, but it is the applicant responsibility to provide a smooth join between Council's Normal standard crossing profile and the finished level of the new carport.</p> <p>Development Engineering has no objection to the application subject to conditions of consent.</p>
Traffic Engineer	<p>Supported subject to conditions</p> <p>No objections to the development application in terms of its traffic implications</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A297695 dated 5 December 2018).

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

Comment: The proposal is unlikely to have an adverse impact on any of the above.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in clause 13(1)(a);*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to avoid that impact;*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment: The proposal design and building siting will avoid any unnecessary adverse impacts.

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

- (a) has considered whether the proposed development is likely to cause an adverse impact on:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to the foreshore*
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) Aboriginal cultural heritage, practices and places,*
 - (v) cultural and built environment heritage, and**
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in clause 14(1)(a);*
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to avoid that impact;*
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact.**
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and appearance of the proposed development.*

Comment: The proposed alterations and additions to this property to create a dual occupancy has considered the requirements of the clause and is not considered to result in any adverse impact on the surrounding coastal environment.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment: The development is unlikely to cause increased risk of coastal hazards on the subject site or other land.

The proposed development for alterations and additions to the existing building to create a dual occupancy has been considered by Council's Natural Environment Coastal and Catchments (NECC) section. The development is considered to adequately satisfy the requirements of the SEPP.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Existing	Proposed	% Variation	Complies
Minimum subdivision lot size:	1 unit/300sqm	Site area = 264.8m ² Currently contains 3 units under one title	1/132.4m ² under strata subdivision	N/A	NA for strata subdivision pursuant to PART 4.1(4) MLEP 2013
Height of Buildings:	8.5m	10m	10.2m	20%	No
Floor Space Ratio	FSR: 0.5:1	0.9:1 (236m ²)	FSR: 1:1 (266.6m ²)	100%	No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.6 Subdivision—consent requirements	Yes
Part 4 Principal development standards	No
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	No
Part 5 Miscellaneous provisions	Yes
Part 6 Additional local provisions	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

Part 2 Permitted or prohibited development

The site is zoned R1 General Residential. The proposed development is best described as 'multi

dwelling housing' which is defined within Manly LEP 2013 as:

"Dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).

Note. Dual occupancies are a type of residential accommodation

Dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling..

Note. Dual occupancies (attached) are a type of dual occupancy"

Accordingly, the proposed development for a dual occupancy (attached) with two (2) dwellings is permissible with consent.

4.3 Height of buildings

Description of non-compliance:

HEIGHT

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.2m
Percentage variation to requirement:	20%

FSR

Development standard:	Floor space ratio
Requirement:	0.5:1
Proposed:	1:1 (existing 0.87:1)
Percentage variation to requirement:	100%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the*

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

Building Height

On the eastern and western sides of the site, the removal of the roof form results in the existing height being reduced by the proposal. Such height reduction is considered to achieve a modest upper level addition which reduces the visual bulk and view impacts (and increases views) from certain apartments and dwellings surrounding the site.

The increase in height from the existing building represents a minor increase from the existing building (410mm) whilst the limited form of the addition on the upper level provides for a modest height and bulk increase when compared with the existing roof form. The minor extent of height increase provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control.

The proposed height is also modest when compared with the height of buildings located on the opposite side of Lauderdale Avenue. The northern side of Lauderdale Avenue includes 3-4-storey residential flat buildings and 3-storey dwelling houses sited atop a sandstone podium. The proposed height is also compatible with the height and scale of other dwellings located on the southern/same side of Lauderdale Avenue. The proposed height (2-storeys above the footpath level) will thereby sit comfortably in its context. It is also noted that the proposed height would not appear excessive from other dwellings to the east, west or south as their primary aspect is to the south towards the harbour

views and not towards the subject built form

The proposed height will not be responsible for any adverse or unreasonable shadow impacts to any residential neighbour, noting the similarity of the proposed height, bulk and scale with the existing built form. Shadows will primarily fall over the garage and roof of the neighbouring dwellings to the south, noting that their primary aspect and openings is to the south towards harbour views.

The proposed height is not responsible for any adverse or unreasonable privacy impacts.

The proposed height is not considered to be responsible for any unreasonable view impacts to the dwelling houses and residential apartments along the northern side of Lauderdale Avenue. View impacts are considered to be of a negligible nature with the majority of views being preserved whilst in some instances improved.

Comment: While the difference in the maximum height of the proposed development to the existing roof line is measured at 730mm higher (RL35.1), the area where the height breach occurs is at RL34.78 which is 420mm higher than the existing roof form. The development seeks to improve the built form by changing the area currently taken up as roof span with a flat roof bedroom suite. While Council have requested height poles to confirm the extent of impact of these works, the applicant has failed to install any to allow an accurate view assessment.

Floor Space Ratio (FSR)

The increase in FSR from the existing building represents a minor increase from the existing building whilst the recessed form of the addition on the upper level provides for a modest height and bulk increase when compared with the existing roof form. The minor extent of height, bulk and scale beyond that existing provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control as well as being compatible with the bulk and scale of surrounding dwellings.

The compact nature of the overall building, combined with the recessed form of the addition, ensure that the bulk and scale is of a modest nature. A significant proportion of the built form is concealed from the public domain being sited below the built form as viewed from the street frontage. The reduction of built form on the western side through replacement of the pitched roof form with a flat roof form is responsible for achieving a compatible streetscape outcome whilst, in some instances, achieving view improvements. The built form is now set in to be compliant with the side setback requirements, being 3m and is recessed from the existing built form from the sides

The proposed FSR increase provides for enhanced amenity to the upper level unit as it converts the roof form to a habitable space which offers an extensive outlook and views, thereby representing a more sustainable use of the roof space.

Comment: The Applicant's justification for non-compliance with the FSR on this site is considered acceptable.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

CLAUSE 4.3 - HEIGHT OF BUILDINGS

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

(1) The objectives of this clause are as follows:

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed addition of a second floor level will replace the existing gable roof with an approximate 22 degree pitch with functional floor space instead of roof area. These new works are the predominant building elements that will be singularly visible from street level as the lower levels are below the finished street levels.

The proposed built form is considered consistent with the topographic landscape, prevailing building height and desired future character. The new second floor level is recessed so that it responds to the topography and steps back up the site.

b) to control the bulk and scale of buildings,

Comment:

While the design of the second floor addition is modern in its architectural character, the simple design is considered to provide a consistent bulk and scale with other more modern development in the vicinity.

The presentation of the addition replacing the large tiled roof form provides a building form which is articulated and incorporates windows which reduce the bulk. The addition is

considered to sit comfortably within this streetscape.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The design as indicated in the photomontage within the Statement of Environmental Effects is considered to minimise view loss. Unfortunately, the applicant did not install height poles to support the current proposal and confirm its impacts on surrounding properties. Subject to the proposal as indicated in the image below, view disruption has been minimised.



PHOTO WITH EXISTING MODEL



PHOTO WITH PROPOSED MODEL

Photomontage of the existing roof form and proposed addition (source: Statement of Environmental Effects by ABC Planning)

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposed development does not adversely impact on solar access to public spaces. The shadow diagrams submitted with the application indicate that there is no additional adversely overshadowing on private open space or habitable rooms in the adjoining developments.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any

other aspect that might conflict with bushland and surrounding land uses.

Comment:

The subject site is not located within a recreation of environmental protection zone.

Zone objectives

CLAUSE 4.4 - FLOOR SPACE RATIO

The underlying objectives of the standard, pursuant to Clause 4.4 – ‘Floor space ratio’ of the MLEP 2013 are:

(1) The objectives of this clause are as follows:

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The existing streetscape character within Lauderdale Avenue contains a mixture of architectural styles and building age. The design of the proposed second floor addition is modern in its architectural character and the simple design is considered to provide a consistent bulk and scale with other more modern development in the vicinity.

The presentation of the addition replacing the large tiled roof form provides a building form which is articulated and incorporates windows which reduce the bulk. The addition is considered to sit comfortably within this streetscape.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed development is to consolidate the floor plates within this building and reduce the number of units from three (3) to two (2). Accordingly the density of the site is reduced notwithstanding the increase to FSR which seeks to improve the internal and external amenity of the site while minimising building bulk.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The visual relationship of the new works is focused on the connection at street level. The new works will not appear excessive in scale and will maintain the character on the southern side of Lauderdale Avenue.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The additional FSR incorporated into the site is substantially located within the existing roof space footprint. The works generally appear to be setback at least 3.0m from each side boundary where the existing gable extends up to 400mm from the same side boundaries. It is noted that these setbacks are inconsistently shown on the plans submitted and notified with the application with some drawings showing this new second floor level with a 1.0m setback from the eastern boundary.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The proposed development is not within a business zone or local centre.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment: The proposed development on balance satisfies the objectives of the R1 General Residential zone providing a dual occupancy development on this site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings and Floor space ratio Development Standard is assumed by the Local Planning Panel.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 264.5m ²	Requirement	Proposed	% Variation*	Complies
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4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/ 300m ²	1/132.4m ²	56%	No. Existing development provides 3 units under one (1) title. Proposed development will result in two (2) units as a strata title.
	Minimum Dwelling Size: Unit 01 - 107m² 90m ² (3 beds) + 5m ² (extra bathroom) + 12m ² (extra bedroom) Unit 02 - 95m² 90m ² (3 beds) + 5m ² (extra bathroom)	Unit 01 - 150m² Unit 02 - 116.6m²	N/A	Yes
4.1.2.1 Wall Height	East - 8m	7.8m	N/A	Yes
	West: 8m	9.0m	12.5%	No
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	Nil to carport 4.5m to Second floor	23%-100%	No. Existing First Floor Level 6.4m.
4.1.4.2 Side Setbacks and Secondary Street Frontages	East - 3.27m	1.0m (existing) 0.7m (proposed box window-first floor)	Up to 78.6%	No
	West - 3.6m	1.0m to existing wall 3.3m to new second floor 0.63m to window box	Up to 82.5%	No. Mostly existing setbacks. New second floor 8.3% non-compliant
4.1.4.4 Rear Setbacks	8m	Existing 2.9m 4.9m to deck@ 2nd Floor	38.75%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (145.5m ²)	56% (81m ²)	44%	No
	Open space above ground 40% of total open space (58.2m ²)	<40% total open space	21.3% (31m ²)	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (58.2m ²)	27% (15.7m ²)	13%	No. However no change to existing site conditions.
	1 native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	12m ² per dwelling	12.2m ² (Unit 1) 21m ² (Unit 2)	N/A	No

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6m	N/A	Yes
Schedule 3 Parking and Access	2 spaces/Dwelling plus 1 visitor Total 5 spaces	5 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	No	No
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
Part 5	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes
Schedule 4 - Trees	Yes	Yes
Schedule 4 - Part A2 – Class 2-9 Buildings	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Description of non-compliance

Notification of the application resulted in submissions from seven (7) properties in relation to view loss. The applicant was requested on numerous occasions to erect height poles to enable a thorough view loss analysis to be undertaken for each property that has claimed view loss from the proposal. At the time of writing this report, no height poles had been erected to allow for a site inspection to assess view loss.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The application fails to satisfy this objective as height poles to identify the extents of the new second floor level have not been installed on the site to inform a balanced assessment of view loss from each of the seven (7) properties concerned about this issue.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

The views identified of concern include water views to the south across Manly Cove to Wellings Reserve and Forty Baskets Beach, Dobroyd Head and South Head and to the west of North Harbour Reserve and beach. All of the available views include land water interfaces with Manly Cove. Most of the views which have been identified will likely lose some of the existing water views above the existing roof line.



Photograph 1 and 2 - Subject site viewed from neighbouring properties to the north and north-west .

The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be

relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Comment:



Figure 1 - Aerial Photo of physical location of view loss objections (source: Northern Beaches GIS)

The image above identifies the properties that have raised view loss as a concern. In each instance, view loss occurs across the front boundaries of each site.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from

bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

It appears that in most cases, the view loss on balance is considered minor. While the views from the lower ground floor level self contained flat within No. 72 Lauderdale Avenue will likely lose the land water interface of Wellings Reserve, depending on which location the second floor level is to be sited within the development, some additional water views to the east and west could be reclaimed with the removal of the existing roof form.

Notwithstanding the proposed development includes additional height which will likely impact the land water interface on the opposite side of Manly Cove with Wellings Reserve, substantial water views are maintained to the east and west of the subject site. While it is acknowledged that the view from the lower ground floor level of No. 70 Lauderdale Avenue was where the greatest concern was focused for that submission, in accordance with the planning principle guidelines for view loss, the views from the primary living area at first floor level remain mostly unaffected.



Photograph 4 - View from the first floor living area of No. 70 Lauderdale Avenue.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

While it is acknowledged that the proposed development (assuming the location of the second floor addition is centred on the site) will result in non-compliance's with the building height and the floor space ratio development standards, as the works are predominantly within the area currently occupied by roof space, the overall impact is generally considered reasonable. As the plans submitted lack in providing clarity around the actual built form proposed, the reasonableness of the proposal remains questionable and cannot be definitively determined as reasonable.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The non-compliance with the development standards of Building Height and Floor Space Ratio is generally considered to not result in unacceptable or unreasonable impact on views from the surrounding properties. As a result, the bulk is not considered to result in unreasonable view creep.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.1.1 Residential Density and Dwelling Size

The site is identified with a density of 1 dwelling/300m². The site currently contains three (3) dwellings on a 264.8m² lot under one title. The proposed development will reduce the number of units two (2) which is a density of 1/132.4m² and a 56% variation. As the proposed development reduces the number of dwellings on the site, the density as proposed is considered acceptable.

4.1.3 Floor Space Ratio (FSR)

The proposal is non-compliant with the Floor Space Ratio prescribed in Clause 4.4 of the MLEP 2013. An assessment of the proposal and its numerical non-compliance with this clause is address else where within this report (see Section 4.6 Variation to the Development Standard). The matters contained to Part 4.1.3 Floor Space Ratio (including consideration given to undersized lots) is addressed in Section 4.6 of this report.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

The proposed development will result in a front building line non-compliance as the design includes a

new polycarbonate carport roof structure that extends to the front boundary. This element of the proposal is questioned as it is inconsistently identified on the full set of plans lodged with this application, is not identified within the statement of environmental effects and is not included as part of the court consent issued on 11 December 2018 for DA326/20016.

Further, the development both existing and new works fail to comply with the numerical setbacks required for this site of 3.27m to the east and 3.6m to the west.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

As the details of a carport structure within the front setback of the site are not completely represented, it cannot be concluded that this aspect of the proposal maintains and enhances the streetscape. This structure is not supported.

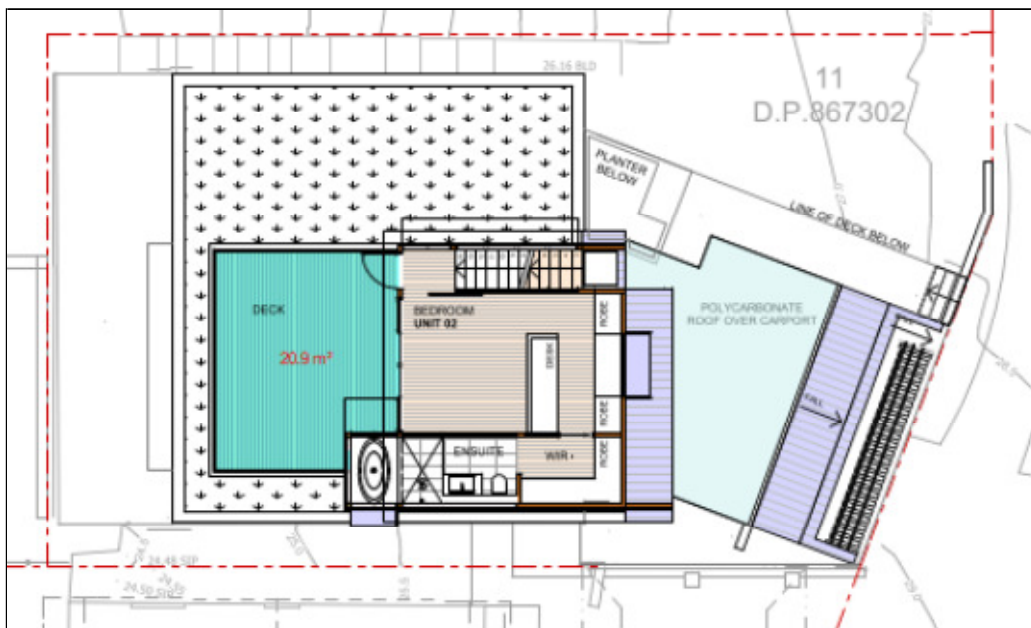


Figure 2 - Carport roof identified on Second Floor Landscape Plan - LP04 Issue J (Source: mm+j architects)

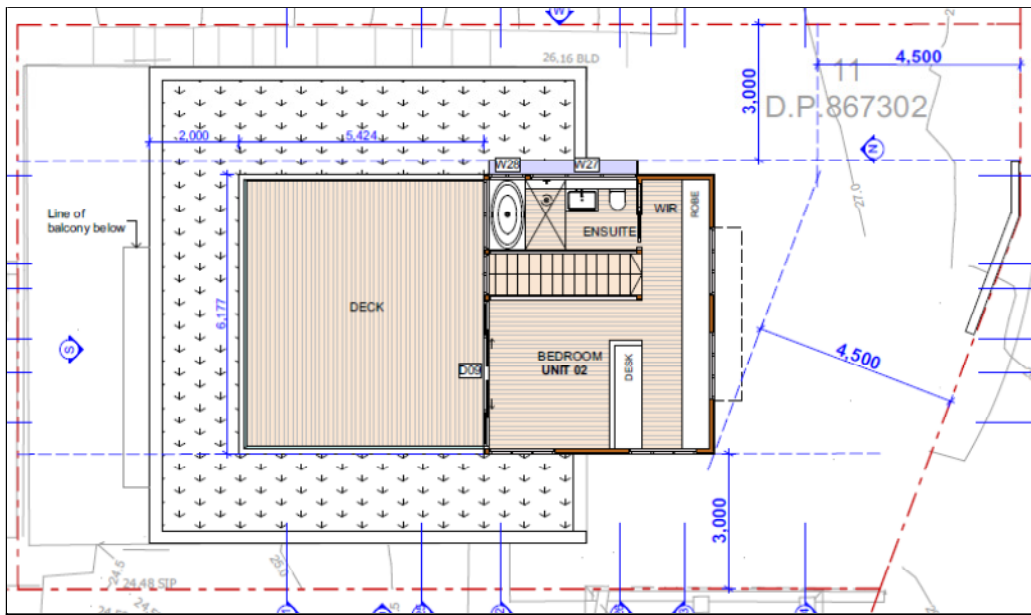


Figure 3 - Second Floor Plan - DA17 Issue L (Source: mm+j architects)

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

Some concerns were raised by the adjoining neighbour to the east in relation to privacy impacts from the proposed new second floor level bedroom and study area and also at first floor level W19 and W20 which adjoin a bedroom and bathroom respectively. The plans submitted with the application provide conflicting detail as identifiable in Figure 2 and 3 above in terms of the location and layout of the second floor level. While the windows referred adjoin spaces which are generally considered to low traffic, low impact areas, the windows are not considered likely to cause privacy impacts. This concern could be addressed more specifically with conditions around the sill heights and glazing of the windows, however as the applicant has failed to provide consistent plans, this issue is not considered suitable to condition and forms a reason for refusal.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

While the siting of the new second floor level in the centre of the building has merit notwithstanding the non-compliance with the setbacks required, the inconsistencies of the location of these works across the plans is unacceptable and cannot be supported.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The site will provide a non-compliant amount of landscaped open space due to the extent of the footprint of the existing building. While the works don't reduce the extent of existing landscaping on the site, the plans are contradictory in their placement of landscaped areas.

The Ground Floor Plan DA15 Issue L identifies the parking layout for the development with tandem parking for Unit 01 adjacent to the building and a carport for a second space for Unit 02 directly adjacent to the north, with a visitor parking space located as a tandem space behind the Unit 02 space. On the drawing, Carport - Ground Floor DA18 Issue I, the spaces for Unit 01 are conflicted by landscape elements in this location.

Accordingly, while a merit assessment of the site may support a non-compliance with the numerical landscaped open space requirements, the inconsistencies and errors with the detailing on the plans means that an accurate assessment of the proposal in relation to landscaping is not possible. The application is therefore deficient in meeting this objective.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The site is not in an area affected by bush fire protection.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Minimum Residential Total Open Space Requirements Residential Open Space Area: OS ³	
	Open space
4.1.5.2 Landscaped Area	Landscape

private open space located adjacent to living rooms, excluding bedrooms of a single area and dimension sufficient to enable it to usefully serve domestic outdoor functions for the exclusive use of the occupants of the dwelling.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles requires the following parking provision for the proposed development:

*Residential Flat Buildings, Multi Dwelling Housing, Shop Top Housing, Attached Dwellings, Boarding Houses, **Dual Occupancies**, Group Homes, Hostels, Seniors Housing:*

*In LEP Residential Zones and all other Zones except LEP Business Zones
1 resident parking space for each dwelling (irrespective of number of bedrooms), plus
0.2 resident parking spaces for each 2 bedroom dwelling, plus
0.5 resident parking space for each 3 (or more) bedroom dwelling, and plus
0.25 visitor parking space for each dwelling (irrespective of number of bedrooms).*

The proposed alterations and additions are required to provide the following (4 spaces including a visitor space):

Manly DCP Requirement	Proposed Development	Spaces Required	Spaces Provided
1 resident parking space for each dwelling (irrespective of number of bedrooms), plus	2 dwellings	x 2	
0.2 resident parking spaces for each 2 bedroom dwelling, plus	N/A	N/A	
0.5 resident parking space for each 3 (or more) bedroom dwelling, and plus	Unit 1 - 4/5 bedrooms Unit 2 - 3 bedrooms	0.5 x 2 =1	
0.25 visitor parking space for each dwelling (irrespective of number of bedrooms).	0.25 x 2	1	
Total Spaces Required		4 spaces	4 resident + 1 visitor

The plans indicate that at Ground Floor level, there is three (3) resident parking spaces and one (1) visitor space. In addition, at First Floor level there is one (1) parking space shown.

Accordingly, the development complies with the minimum number of parking spaces required by Schedule 3 of Manly DCP.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;

- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

This development application has been assessed in accordance with the provisions of 4.15 of the EP&A Act, 1979, the provisions of relevant EPI's, MLEP 2013 and the relevant codes and policies of Council including the relevant provisions of the MDCP 2013.

The assessment of this application has found that the plans submitted fail to establish a consistent development scheme and incorporate numerous design inconsistencies and contradictions.

Further, Council has on numerous occasions requested a comprehensive set of accurate plans and the erection of survey accurate height poles to provide certainty as to the full extent of view loss likely to occur to surrounding properties.

The notification of the development resulting in twelve (12) submissions, eleven (11) of which oppose the proposal. The majority of the submissions raised concern with the following:

- View loss
- Inconsistency and inaccuracy of plans
- Height and FSR non-compliance
- Traffic and Parking

The issues raised in the submissions have been addressed within the 'Public Notification Section' of this report. On balance, the proposal is unsatisfactory in relation to the insufficient information and inconsistent details of the application and is contrary to maintaining and protecting the public interest.

As a result of the matters raised in this report in terms of insufficient information, it is recommended that the Northern Beaches Local Planning Panel, as the consent authority refuse this application for the reasons detailed within the 'Recommendation' section of this report.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2019/0342 for the Alterations and Additions to an existing residential building to create an attached dual occupancy and strata subdivision on land at Lot 11 DP 867302,79 A Lauderdale Avenue, FAIRLIGHT, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to enable the assessment of the application due to inconsistencies with the design.

Pursuant to Section 4.15(1)(e) and 4.6 (4)(a)(ii) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest as it is not consistent with the objectives of the building height development standard relating to views.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan .
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.